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GERALD K. WHITE
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205 W. RANDOLPH STREET
SUITE 835
CHICAGO, IL 60606

In re Application of	:
James P. Elia	:
Serial No.: 09/064,000	: PETITION DECISION
Filed: April 21, 1998	:
Attorney Docket No.: 796-P-12	:

This is in response to the petition under 37 CFR 1.181, filed May 1, 2006, requesting the Office to refund an extension of time fee.

The file history is summarized in applicant's petition and is generally irrelevant to the relief requested by the petition and is, therefore, not repeated herein except for relevant parts.

The examiner mailed a Final Office action to applicant on October 20, 2005, setting a three month shortened statutory period for reply. Applicant replied on December 2, 2005, with an amendment addressing all of the rejections of record. Applicant, upon failing to receive a timely Advisory or other action, contacted the examiner by Status letter and by telephone in March, 2006, and received assurance that an Advisory Action was in preparation. Having received no Advisory Action by April 18, 2006, applicant filed a Notice of Appeal with the Appeal fee and an extension of time fee being paid. Applicant requests refund of the extension of time fee since no Advisory Action was timely prepared and Office policy is such that a response to a Final Office action filed within two months of the date of mailing thereof will extend without penalty the shortened statutory time period for reply set in the Final Office action to the date the Advisory Action is mailed. Since no Advisory action was mailed within the six month statutory period, applicant's time period for filing a Notice of Appeal without an extension of time being required was automatically extended from three months to the maximum six months. Refund of any extension of time fee is, therefore, justified.

It is noted that an Advisory Action accompanied by ten pages of rebuttal to applicant's arguments was mailed to applicant on April 24, 2006, just prior to the filing of this petition which renders moot applicant's request contained therein for an Advisory Action. It is also noted that applicant has since filed RCE papers and a further amendment which are now before the examiner.

The petition is **GRANTED**.

The extension of time fee paid of \$510.00 with the filing of the Notice of Appeal will be refunded to applicant by check as no Deposit Account is given.

The application will be forwarded to the examiner for consideration of the RCE papers and amendment filed therewith.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number 571-273-8300.

John L. LeGuyader
Director, Technology Center 1600

A handwritten signature in black ink, appearing to be 'J. LeGuyader', written over the printed name and title.